

**FLATHEAD COUNTY BOARD OF ADJUSTMENT
MINUTES OF MEETING
NOVEMBER 8, 2006**

CALL TO ORDER The regular meeting of the Flathead County Board of Adjustment was called to order at approximately 6:00 p.m. Committee members present were Tony Sagami, Gina Klempel, Denny Rea and Mark Hash. Scott Hollinger had an excused absence. George Smith, Eric Giles, Rebecca Shaw and Jeff Harris represented the Flathead County Planning & Zoning Office (FCPZ).

There were approximately 10 people in the audience.

APPROVAL OF MINUTES There were no minutes approved at this meeting.

**ZONING VARIANCE/
NORSKOG
(FZV-06-11)** A request by Jerry Norskog for a Zoning Variance to property within the Bigfork R-4 (Two-Family Limited Residential) Zoning District. The applicant is requesting a variance to Section 3.12.040 3(A) of the Flathead County Zoning Regulations, which require a five (5) foot setback from each side yard. The applicant has an existing structure which encroaches approximately eight (8) inches into the required setback. The property is located at 239 Beach Road.

STAFF REPORT George Smith, of the Flathead County Planning & Zoning Office informed the Board the applicant requested to postpone this project for one month.

MOTION Klempel made a motion seconded by Sagami to postpone Staff Report FZV 06-11 for one month.

ROLL CALL On a roll call vote the motion passed unanimously.

**ZONING VARIANCE/
JIM JOHNSON
(FZV-06-12)** A request by Jim Johnson for a Zoning Variance to property within the Middle Canyon Zoning District. The applicant is requesting a variance to Section 4.1(E) 3 of the Canyon Area Land Use Regulatory System (CALURS), which states that new structures shall not be located within 50 feet of any natural water body. The applicant would like to demolish an existing guest house, located twenty (20) feet from the lake, and relocate the new structure thirty-five (35) feet from the lake. The property is located at 642 Belton Stage Road.

STAFF REPORT	George Smith of the Flathead County Planning & Zoning Office reviewed Staff Report FZV-06-12 for the Board.
BOARD QUESTIONS	<p>Sagami asked how deep the lot was.</p> <p>Smith stated it is about 100-110 feet deep and is bisected by a road. There is an existing house and garage already on the property with the septic system placed lake-side of the garage. There is no room on the front of the lot to build a guest house.</p>
APPLICANT	Not present.
PUBLIC COMMENT	None.
APPLICANT REBUTTAL	None.
STAFF REBUTTAL	None.
BOARD DISCUSSION MOTION	<p>Hash stated it seemed like a very clean request.</p> <p>Sagami made a motion seconded by Hash to adopt Staff Report FZV-06-12 as findings of fact and grant the Zoning Variance.</p>
BOARD DISCUSSION	None.
ROLL CALL	On a roll call vote the motion passed unanimously.
CONDITIONAL USE PERMIT/PEAK DEVELOPMENT (FCU-06-14)	A request by Peak Development, LLP for a Conditional Use Permit to construct multi-family dwellings within the Evergreen RA-1 (Residential Apartment) Zoning District. The applicant wishes to construct fifty-four (54) residential apartments in four (4) buildings on 1.41 acres. Lots in the proposed dwellings will be serviced by the Evergreen Water and Sewer District. The property is located at 145 Bando Lane, within the Cherry Creek Village Subdivision.
ZONING VARIANCE/PEAK DEVELOPMENT (FZV-06-14)	A request by Peak Development, LLP for a Zoning Variance to property within the Evergreen RA-1 (Residential Apartment) Zoning District. The applicant is requesting a variance to Section 6.11.020, parking requirement, and 6.11.060, front

yard setback, in the Flathead County Zoning Regulations. The property is located at 145 Bando Lane.

STAFF REPORT

Eric Giles reviewed Staff Report FCU 06-14 for the Board.

**BOARD
COMMENTS**

Rea asked if there was any way traffic could go north and exit off the cul-de-sac.

Giles stated there are no other accesses or easements to the site. He pointed out other residential subdivisions on the map and reiterated there are no other access points to get in and out of the site; Bando Lane is the only access to the site.

Rea asked what the width of Bando Lane is.

Giles stated it is built to County standards. They think it is twenty four (24) feet by eight (8) feet wide. He stated the applicant is proposing landscaping, lighting, and walking paths throughout the complex. Staff asked the applicant to provide a landscaping plan prior to construction of the units. He stated they would have to get DEQ approval for the stormwater drainage plan. He said Staff's main concerns are the increase in traffic along Bando Lane, access coming in and out of the site off of US Highway 2, and the pedestrian movement of children to West Evergreen School. He stated Staff is comfortable knowing if they go through another approval process those issues will be mitigated; that process being a system impact analysis by the Montana Department of Transportation. Giles stated there was one change Staff wanted to make to condition #3, regarding the project completion date. Staff had spoken with Jackola Engineering and they indicated they would not be able to complete the project before the 1-year deadline date. Giles stated Staff would allow an extension of 1-year, making the deadline November 8, 2008, but said they would not be allowed another extension.

Klempel said there seemed to be a discrepancy in the amount of trips calculated by Staff and the applicant; a difference of 108 vehicle trips per day. She wanted to know who was correct.

Giles stated Staff got their information from MDT; that is always Staff's resource.

Rea asked how many units would be there.

Giles stated 54 units.

Klempel asked how many children walk to the West Evergreen School.

Giles stated there's a lot and that is an issue. A commercial subdivision recently approved across the street will be required by condition to construct a walking path to the school. He said if that is implemented there, and a systems impact analysis mandated the applicant create a new traffic light and a cross-walk, that would provide safer movement for the children getting to and from school.

Hash asked if the neighborhood impact would be mitigated if the applicants receive this new approach permit since other restrictions would be placed on it.

Giles stated yes, the Montana Department of Transportation would have a systems impact analysis that would require the applicant to mitigate all existing conditions in order to receive their new approach permit.

Rea asked if there were a walking path to get to the elementary school.

Giles stated his only emphasis was on the West Evergreen Middle School.

Rea asked about the elementary school specifically.

Giles reiterated his only emphasis was on the Junior High School.

Harris stated the County is in the process of engineering a bike path system to the elementary school along East Evergreen. He said Staff doesn't know when it will be in place but it is funded.

Rea reiterated his concern about elementary school children walking to school from this subdivision.

Giles stated his understanding was that they would not be crossing traffic.

Rea reiterated his concern.

Giles said that concern would be mitigated through a new approach permit from MDT.

Klempel asked if they have school buses in that area.

Giles stated he didn't receive a response from the school districts regarding the bus systems.

Sagami asked where the elementary school was on the map.

The Board discussed the access to and from the schools.

Hash asked about the standard lighting condition. He wanted to know if there was a reason it wasn't in this report.

Giles stated it's within the landscaping plan.

Hash asked if it would make sense to modify condition #6 to require the landscaping plan to be approved by the Planning Office.

APPLICANT

Jim Burton, of Jackola Engineering, asked the Board if they would be doing the variance separately.

Giles stated yes.

Burton said the variance should be done first because condition #1 for the Conditional Use Permit stated there should be an approved variance.

Giles said he was told to do the Conditional Use Permit first and then the variance.

Klempel explained her reasons to the Board why she thought the Conditional Use Permit should go first, then the variance.

Harris stated the Board could "hold" their decision on the first item until they heard the second item and then act on both together.

Sharon Jackola, of Jackola Engineering, presented an enlarged site plan showing the buildings and landscape plan. She stated it would give the Board a glimpse of what the applicants were thinking. She showed several drawings of the buildings and landscaping plans. She said they created a pathway between the buildings and they would have lighting throughout the pathway system.

Sagami asked if it would be characterized as affordable or moderate housing.

Sharon said it would be affordable.

Jim Burton showed the Board a map of the parking spaces for the buildings. He said there were 98 parking spaces and they need an additional 10 to meet the requirements of the Flathead County Subdivision Regulations. He said they have an agreement with Ashley Furniture for off-site parking; these spaces would not be used by the furniture company because they are in the back of the building. He stated they are asking for this variance to be able to park in the setback and park off-site for ten parking spaces.

Sagami asked if Giles had seen this cross-parking agreement.

Giles stated he had not.

Burton stated that was part of the original Cherry Creek Subdivision.

Rea wanted Staff to obtain a copy of that agreement and have it in the file before the project could be started.

**PUBLIC
COMMENT**

Randy Morken, 132 Park Ave, owns land adjacent to the property. He stated he is not against the project but has a few questions. He spoke about the traffic and the children climbing the neighbors' fence. He stated there are a dozen people working at the furniture building and the neighbors can not control the people parking on their property.

Jim Dettman, 128 Park Ave, pointed his property out on the map. He stated the neighbors have a problem with kids cutting across their property. There is a fairly good fence but kids go over it anyway. He stated it will be more trouble than there already is with 200 more people living there.

**STAFF
REBUTTAL**

None.

**APPLICANT
REBUTTAL**

None.

**BOARD
DISCUSSION**

Hash asked Mr. Dettman about his concern regarding children and what kind of condition he would recommend to mitigate his concerns.

Dettman thought the fence would do it however he doesn't know what the Board could do to keep kids from climbing the fence.

Hash asked if there is there any type of landscaping that could be put into place to hinder them.

Jackola stated they haven't designed a height for the shrubbery but said they could.

Hash asked what the solution to the problem could be.

Discussion was held regarding the landscaping and the fence to keep the kids from climbing over it.

Hash asked about the parking requirement agreement being put in perpetuity and said Staff would have to make sure that happened.

Giles stated the spaces in the back are typically empty; it is really meant for overnight parking for residents.

Hash asked if the possible vehicle overflow could go to another place other than Ashley furniture.

Burton stated the parking spaces in the complex would all be standard sizes. He said they can go down to 20% which is compact size parking and squeeze parking out of it, but they don't want to do that.

Discussion was held regarding parking off-site and the agreement with Ashley furniture.

Rea brought up emergency vehicle access the property if tenants were to park closer to the apartments instead of the off-site parking.

Burton stated creating the easement around the property for emergency vehicle access was part of the original approval of the subdivision, which was approved by the Fire Department at that time.

Giles stated since the use of the land had changed from commercial to residential, they would be required to provide letters from various agencies stating they meet the specific requirements.

Hash reiterated the fence issue stating there should be a condition requiring the applicants to take measures to stop children from climbing the fence prior to occupancy. He also stated it would be part of the landscape design and the Planning Office would have to approve it.

Burton said they would be willing to work with the neighbors on that issue.

The Board further discussed the fence issue.

Morken stated the kids were pulling the fence out from the bottom and it has to be fixed.

Harris said Staff had a few suggestions for the Board to help alleviate their concerns. He proceeded to read the suggestions. On condition #6, which deals with the landscaping plan, the last line, after it says submitted to the Planning Office, he would insert "and approved prior to construction" so the Planning Office would have to approve those plans. Also, a new sentence could be added that says, "as part of the landscape plan, the applicant shall demonstrate how the landscaping will discourage children from passing through the landscape buffer".

Hash would like to have the neighbors explore all avenues. He suggested the condition state: the applicant will take steps to mitigate children from spilling into neighboring properties prior to occupancy.

Harris said Staff would like to see good faith efforts made by the applicant.

Hash said it's the responsibility of the developer to mitigate the concerns of the neighbors.

Giles read a condition for the Board: The applicant shall take steps to mitigate children trespassing onto adjacent properties prior to occupancy. This shall be addressed in the landscaping plan.

Harris wanted to add good faith; something to measure it by.

Giles stated that condition #3 should read: The entire project should be completed by November 8, 2008 and no extensions shall be granted.

Harris read a suggestion for adding condition #8 to the Board: The applicant and the owners of Ashley Furniture Store property enter into a perpetual cross-parking agreement for a minimum of 10 parking spaces. This agreement must be recorded as a perpetual use on the Ashley Furniture Store property and be submitted to the Planning & Zoning Office as a condition.

Rea stated the problem with that is being in perpetuity. If the furniture store changes the use of the building they might need those parking spaces.

Harris stated it's not the use of the furniture store; it's the change of use of the apartments. As long as the apartments exist, to meet the regulations, you have to have the requisite number of parking spaces.

Hash said their approval is based on having the cross agreement, and if they don't have the cross agreement, they lose their approval. In regards to protection, maybe there is some type of document recorded that reflects this easement and requirement on the property.

Discussion was held regarding the Fire District requirements and who would make sure they are in compliance with those requirements.

Giles read a condition stating: the applicant shall receive a letter of approval from the Evergreen Fire Department stating they have met all fire mitigation requirements.

Rea wanted to know what the impact to the elementary school would be.

Harris stated a condition could be added requiring a letter from the principal of the elementary school stating that there is capacity for additional student enrollment.

Rea said he would like to know about the Middle School as well.

MAIN MOTION

Hash made a motion seconded by Sagami to adopt Staff Report FCU-06-14 and FZV-06-14 as findings of fact, as amended, and grant the Conditional Use Permit and the Zoning Variance.

**MAIN MOTION
ROLL CALL**

On a roll call vote the motion passed unanimously.

**ZONING
VARIANCE/
ERIC JOHNSON
(FZV-06-13)**

A request by Eric Johnson for a Zoning Variance to property within the Bigfork AG-40 (Agricultural, 40 acres) Zoning District. The applicant is requesting a variance to Section 3.050.040, Bulk Dimensional Requirements, of the Flathead County Zoning Regulations, which requires one (1) home per forty (40) acres. The applicant requests to split the existing 48.66 acre parcel into two (2) parcels. The property is located at 585 Ramsfield Road.

STAFF REPORT

Rebecca Shaw reviewed Staff Report FZV-06-13 for the Board.

APPLICANT

Lisa Horowitz, 935 1st Street East in Whitefish, represented the applicant, Eric Johnson. She showed the original plat of the parcel and gave some history of the property. She went through the staff report and spoke about each of the criteria and how they felt the applicant met them. She said they looked into doing a boundary line adjustment since the adjacent neighbor had expressed an interest in this parcel. That would have brought his parcel into compliance with the zoning but taken another one out of compliance. She said it has been done in other areas she has worked on but it is not possible under the Flathead County regulations; they felt this was the only option left.

Sagami asked Staff why the applicant could not do a boundary line adjustment.

Shaw stated the regulations do not allow you to create a non-conforming lot with a boundary line adjustment.

Hash stated the Board has approved such applications in the past, making a non-conforming lot that was less of an impact than what they are asking for.

Shaw stated her understanding was that they could not do it the other way and that was the direction she had received. She said it was actually more of a process to go through it this way.

Horowitz stated there was also another adjacent family member that may have been interested in the property and they didn't even talk about that option.

Discussion was held regarding amending the family transfer documents.

Horowitz stated one of the parcels was not part of the original family trust and therefore could not have been amended through that process. She continued to go through the criteria.

Sagami asked the approximate size of Johnson's parcel.

Horowitz responded, 13 acres.

Sagami wanted to know if the Marcus property was zoned SAG-40.

Shaw stated it is but it is non-conforming. They would want the 33 acres on the west side of the creek. It is 15 acres now, and they would be adding the 33 acres to make it a conforming parcel. Then they would do a boundary line adjustment to make it one parcel.

The Johnson's home is on the other 15-acre parcel.

Harris commented on family transfers and how it wouldn't work at this location because of the zoning. Family transfers have to be done according to the zoning.

Staff thought a variance was the best route to go because it brings it to a public forum. Harris stated when a boundary line adjustment is done we don't see them; they are recorded. He also stated because of the topography and water, and by the hardship created, this was the best approach.

Hash understood where Staff was coming from with their goal of keeping large tracts of land intact, but he said Staff decided this was a hardship. He was confident that Staff had put these conditions on before so the applicants don't come back before the Board or try to do any further division of this tract. That's the privilege they get by being allowed to do this, but Staff didn't put that condition on this.

Shaw stated there typically aren't conditions placed on a zoning variance.

Hash said the Board has done it before.

Harris stated that it's because it is a hardship situation; the Board either grants the variance or they don't. They don't typically grant with conditions. He also stated Staff is a little bit comfortable with this arrangement given that the property is within the floodplain.

Hash stated that could change easily by people hauling a lot of material in to bring it out of the floodplain; his concern is the septic system.

Harris stated Staff doesn't think public water and sewer will extend out into this area. Also, the fact that the adjacent owner, who has a substandard parcel now, would purchase that property and make it whole with the zoning would be "a positive" in our eyes.

Shaw read from the Flathead County Zoning Regulations stating conditions could be placed on a zoning variance.

Sagami spoke about a boundary line adjustment and how three non-conforming parcels would then be one non-conforming and one conforming.

Further discussion was held regarding a boundary line adjustment versus a variance.

The Board discussed at length, future development of the parcel and the floodplain issues.

Shaw stated her reassurance is because it's all floodplain. Even though there are 3 different parcels, it won't have condos placed on it; there really is nowhere to do that. She stated Mr. Johnson couldn't boundary line adjust his 44-acre parcel, currently conforming, down to 15 acres, which would be non-conforming. The regulations don't allow for that.

Hash thought the Board has done that before but would have to research that.

Klempel asked if there were other structures on Ramsfield.

Horowitz stated there is a horse farm in the area off the main road.

Klempel said if they ever do extend sewer and water out there, they could tie into it. She agreed with Shaw that the parcel is not conducive to a large subdivision.

Shaw stated Mr. Johnson would still hold the easement across that road.

Mr. Johnson stated it was never his intention to develop this parcel; it is just an awesome single-family home site because the rest is in the floodplain.

**PUBLIC
COMMENT**

None.

MAIN MOTION

Hash made a motion seconded by Sagami to adopt Staff Report FZV-06-13 as findings of fact, with one added condition, and grant the Zoning Variance.

**BOARD
DISCUSSION**

Sagami was still confused by the boundary line adjustment as opposed to a variance.

Rea responded, stating no matter what they do, they are creating something non-conforming. He said as long as they put a condition on it stating the parcels cannot be further divided it would prevent a potential buyer from coming in and apply for more lots.

The Board discussed the various issues associated with this parcel.

Hash was uncomfortable with this, but because of the nature of where this property is, and with the condition that it cannot be further subdivided, he would be willing to accept it right now. He said the applicant has to prove to the Board the hardship they are faced with. He clarified the Board's role for granting a variance and talked about his feelings regarding this process.

Rea spoke about farm land being split up in the Lower Valley area and stated the Board will see more of this due to the topography. He wasn't sure the applicant had exhausted all resources.

Shaw stated the Planning Office advised the applicant they would not be able to do a boundary line adjustment.

Horowitz said they spoke with a surveyor because they needed to figure out, with respect to the topography, how big each piece would be. In order to put the application together, he had to draw that out.

Rea asked if the surveyor saw any other way around this.

Horowitz said they didn't really know the ins-and-outs. She was surprised a boundary line adjustment was not an option because in other places she has worked it has been acceptable to adjust the boundary line to make one non-conforming lot and one conforming.

ROLL CALL

On a roll call vote the motion passed 3-1 with Rea dissenting.

OLD BUSINESS

Harris gave the Board an idea of what would be coming up next month.

Sagami stated he would not be at that meeting.

Klempel asked about the Postovit Conditional Use Permit file that wasn't heard tonight.

Harris explained the issue regarding the file and spoke about the Ashley Lake Land Use Advisory Committee and their process.

Klempel said she spoke with some of the homeowners in the Ashley Lake area and was told the main concern was dust.

Harris agreed and talked about the paving of Ashley Lake Road by developers in the area.

NEW BUSINESS

Rea said he spoke with Jeff, before the meeting, regarding a progress report on Conditional Use Permits the Board has approved. He would like to make sure applicants are compliant.

Hash stated we don't have the resources to monitor these applications and asked Staff if there could be a condition added stating the applicant will submit a progress report, which could be sent in the Board's packets; something that doesn't create too much more work for staff.

Harris stated that staff does that, asks the applicant to demonstrate how they have complied with the conditions, and we can certainly send that report to the Board.

ADJOURNMENT

The meeting was adjourned at approximately 8:00 p.m. on a motion by Hash seconded by Klempel. The next meeting will be held at 6:00 p.m. on December 5, 2006.

Dennis Rea, President

Mary Sevier, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 1/2/07